

# SENATE BILL REPORT

## SB 6591

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As Passed Senate, March 12, 2002

**Title:** An act relating to revising the tobacco products tax by imposing the tax upon those persons who acquire tobacco products for resale from persons who are immune from state tax.

**Brief Description:** Changing the taxation of tobacco products to provide for the taxation of products purchased for resale from persons immune from state tax.

**Sponsors:** Senators Prentice and Oke; by request of Department of Revenue.

**Brief History:**

**Committee Activity:** Labor, Commerce & Financial Institutions: 2/6/02 [DP, DNP].

Passed Senate: 3/12/02, 47-0.

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### SENATE COMMITTEE ON LABOR, COMMERCE & FINANCIAL INSTITUTIONS

**Majority Report:** Do pass.

Signed by Senators Prentice, Chair; Keiser, Vice Chair; Fairley, Franklin, Gardner, Rasmussen and Regala.

**Minority Report:** Do not pass.

Signed by Senator Honeyford.

**Staff:** Kim Johnson (786-7486)

**Background:** The tobacco tax applies to the sale, use, consumption, handling, or distribution of all tobacco products in the state. Tobacco products and cigarettes are taxed separately. Examples of tobacco products are cigars, pipe tobacco, and chewing tobacco. The tax is based on the wholesale price, which is the price charged by the manufacturer to a distributor.

Currently the tobacco tax is imposed on "distributors." The tax is due from the distributor when the distributor brings tobacco products into the state, manufactures tobacco products in the state, or ships tobacco products to retailers in the state. However, there are persons in the state who are not required to pay the tobacco tax. When a person who is immune from state taxation acts as a distributor of tobacco products, the state tobacco tax is not collected.

**Summary of Bill:** The definition of distributor is changed to include sellers of tobacco products that handle tobacco products which have not been subjected to the tobacco tax. Therefore, distributors who sell tobacco products must pay the tobacco tax in cases where the tax has not already been paid.

The definition of person is changed to exclude federal governmental entities and federally recognized Indian tribes from the definition.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect on July 1, 2002.

**Testimony For:** There is a loophole in the state tobacco tax law resulting in lost revenue for the state. Purchasing tobacco products from persons immune from state taxation has become a new business practice in Washington. This practice is hurting businesses who compete with those businesses using the loophole.

**Testimony Against:** The lost revenue is occurring for other reasons than the supposed "loophole." The consumer will always look to buy the cheapest product and with a tobacco products tax as high as Washington's, the consumers will go elsewhere to purchase their tobacco. This legislation will shift the burden of the tobacco tax onto the retailers, while the tax is supposed to be paid by the distributors.

**Testified:** Julie Sexton, Dept. of Revenue (pro); Gary O'Neal, Dept. of Revenue (pro); Catarina Wong, CoveMark International (pro); Mark Trophett, Cigar Assoc. of America, Smokeless Tobacco Council (con); T.K. Bentler, Washington Assoc. of Neighborhood Stores (con).

**House Amendment(s):** The Department of Revenue is required to develop invoicing rules for distributors under RCW 82.26.010(3)(d) and retailers under RCW 82.26.070.

A retailer failing to pay the tobacco tax will not be assessed penalties for the first offense. Penalties and interest will be assessed for any subsequent nonpayments.